

<p style="text-align: right;">Page 298</p> <p>1 second conversation with Mr. Jensen about this 2 Personix E-mail? 3 A. I don't recall taking any notes 4 from the conversation at this time. 5 Q. Did Mr. Jensen take any notes to 6 your best recollection? 7 A. I don't recall that Mr. Jensen 8 took any notes regarding our conversation at 9 this time. 10 Q. And so have you told me about all 11 of the communications you had with Mr. Jensen 12 about Personix that you can recall in 13 reference -- by referencing this E-mail and 14 that second conversation with Mr. Jensen? 15 A. The E-mail and the second 16 conversation are the only things that I recall 17 speaking to Mr. Jensen about Personix at this 18 time. 19 Q. Did you talk to anybody else 20 within Anthem FEP's management organization 21 about your concerns related to Personix? 22 A. I believe that I also mentioned 23 this to Ms. Hinkle. 24 Q. When? 25 A. Subsequent to the E-mail, but I</p>	<p style="text-align: right;">Page 300</p> <p>1 payments to Personix might not comply with the 2 FEP government contracts? 3 A. Specifically, no. 4 Q. Well, generally. Was there 5 something we are missing that you haven't told 6 us about concerning -- 7 A. Not that I can think of at this 8 time. 9 Q. Now, I heard you mention the name 10 Print Mail earlier. 11 A. Administar Print Mail. 12 Q. What was Administar Print Mail? 13 A. Administar Print Mail, to the best 14 of my recollection, was a division or 15 subsidiary of Anthem. They performed services 16 such as mail handling, scanning, those sorts of 17 things. I don't recall everything that they 18 do. I think they may have also did -- they may 19 have also done directory printing. 20 Q. And do you know if there is any 21 relationship between Personix and Administar 22 Print Mail? 23 A. You're testing my memory, but I 24 don't recall if Administar Print Mail was the 25 name of Personix after a change of organization</p>
<p style="text-align: right;">Page 299</p> <p>1 don't recall the specific date. 2 Q. Do you remember where the 3 conversation occurred? 4 A. I do not recall where the 5 conversation occurred at this time. 6 Q. Do you remember what you said to 7 Ms. Hinkle? 8 A. My recollection is, Kathy, I sent 9 an E-mail to Michael about possible impropriety 10 in billing from Personix. I just want to make 11 sure you are aware of it, so if you have any 12 interest, you can look into it. 13 Q. And what did Mrs. Hinkle say to 14 you? 15 A. I don't recall what Ms. Hinkle 16 said at this time. 17 Q. But that conversation with 18 Ms. Hinkle and the conversation with Mr. Jensen 19 is what had you so agitated on the date that 20 you talked to Mary O'Rourke? 21 A. I don't recall if that's the 22 impetus for my agitation or not at this time. 23 Q. Is there anything else you 24 remember, any facts at all, related to your 25 concerns that Personix might not -- that</p>	<p style="text-align: right;">Page 301</p> <p>1 or something. I don't recall at this point. I 2 may be able to recall that, you know, at a 3 later point. I just don't recall. 4 Q. Well, I only have this point. 5 A. I understand. 6 Q. So what could you look at, what 7 would you want to look at to refresh your 8 memory? 9 A. Probably if I could look at the 10 affidavit, I may be able to recall that. 11 Q. Now, was that affidavit written by 12 you in your own handwriting? 13 A. No. 14 Q. It was written in conjunction with 15 your lawyers; is that right? 16 A. Yes. 17 Q. And you -- the actual typing was 18 done at your lawyer's office, wasn't it? 19 A. I don't know where the actual 20 typing was done. 21 Q. You didn't type it up, did you? 22 A. No, but that's a different 23 question. No, I did not type it up. 24 Q. All right. It could have been 25 typed up at a shopping mall for all we know,</p>

<p style="text-align: right;">Page 302</p> <p>1 but what you are saying is you didn't type the 2 affidavit that you signed? 3 A. That's correct. 4 Q. And the affidavit you signed was 5 after you had sat down with your lawyers and 6 reviewed what they had written up for you to 7 sign, right? 8 A. That's my recollection. 9 (Thereupon, Defendants' Exhibit 33 10 was marked for purposes of identification.) 11 Q. I'm going to hand you what's been 12 marked as Exhibit 33. 13 MR. KELLER: 33? 14 MR. DYER: I believe it's 33. The 15 last one was 32. This is my all time best, 16 guys, in terms of messing up the exhibit 17 numbers. I apologize. 18 Q. Now, with all that discussion, 19 what's the exhibit number in front of you? 20 A. 33. 21 Q. Handing you what has been marked 22 as Exhibit 33. Have you seen that document 23 before? 24 A. I never -- I don't recall ever 25 seeing that document.</p>	<p style="text-align: right;">Page 304</p> <p>1 that was used when you signed invoices for 2 approval? 3 A. It does not look familiar to me, 4 that stamp. 5 Q. But the okay to pay would suggest 6 that somebody stamped this invoice and made a 7 decision on paying the invoice, right? 8 MR. KELLER: Objection as to form. 9 THE WITNESS: There is no 10 signature. There is a printed person's name, 11 and there is no date. So to me, I would not 12 think that that invoice had been approved for 13 payment. 14 Q. But I guess what I'm trying to do 15 is distinguish this invoice from one where you 16 said it was automatically approved because of a 17 purchase order. Would you expect to see an 18 okay to pay stamp on an invoice that was 19 automatically approved by a purchase order? 20 A. I don't recall. 21 Q. You just don't know one way or the 22 other? 23 A. I don't know. 24 Q. And so you can't solve the mystery 25 of why this one invoice for 40 bucks from</p>
<p style="text-align: right;">Page 303</p> <p>1 Q. This is a document that, again, 2 was, I will represent to you, was produced to 3 us by your counsel. And do you recognize at 4 the bottom the name N. Hayes underneath okay to 5 pay? 6 A. I do. 7 Q. Do you have any idea why this 8 document would have been one that you -- 9 whether you took this document with you when 10 you left Anthem? 11 A. I don't recall. 12 Q. Now, do you see that okay to pay, 13 and then there's some stuff in the middle of 14 the invoice there? 15 A. I do. 16 Q. Does that -- is that basically 17 what was stamped on an invoice when an invoice 18 had to be approved by a manager in order to be 19 paid? 20 A. I don't recall. 21 Q. Did you ever sign any invoices 22 when you were a manager? 23 A. Yes, I recall signing some 24 invoices. 25 Q. And is this the kind of format</p>	<p style="text-align: right;">Page 305</p> <p>1 Personix was in your document production? 2 A. I can't. 3 Q. All right. 4 A. I don't even know -- I can't read 5 it. I don't know what it says. 6 Q. And as we leave the Personix 7 issue, you don't have any reason to conclude 8 that Anthem FEP in some way profited from 9 Personix billing Anthem for services that 10 weren't performed, do you? 11 A. I don't have any reason to believe 12 or disbelieve that Anthem FEP profited from 13 Personix's submission of invoices for services 14 not performed for FEP. 15 Q. Personix, you would be concerned, 16 might have profited, but you don't have any 17 reason to think Anthem FEP did, right? 18 A. Well, another division of Anthem 19 may have profited, because the charges, which 20 may have been legitimate, were not charged to 21 the appropriate contact -- contract. 22 Q. Now, I didn't see that referenced 23 in your E-mail. Is that a different issue for 24 Personix? 25 A. No.</p>

<p style="text-align: right;">Page 306</p> <p>1 Q. I'm confused. Is that an issue 2 you were concerned about when you were at 3 Anthem FEP with Personix, even though it's not 4 mentioned in your E-mail?</p> <p>5 A. You had asked me if FEP profited 6 from this practice, and my answer would be no. 7 However, the division for whom services were 8 provided that was not being billed would have 9 lower expenses; therefore, they would have 10 profited from Personix's mistaken invoice or 11 misdirected invoice or whatever it may have 12 been.</p> <p>13 Q. So how -- is it your -- is it your 14 position, and I don't see that in your E-mail, 15 but is it your position that Personix was 16 providing services and deserved to be paid, 17 they were just providing services to one 18 division and billing another?</p> <p>19 A. I couldn't draw that conclusion 20 from what I had seen. I'm purely speculating 21 that if those services were actually delivered, 22 then the division for which the services were 23 performed were not being billed for it.</p> <p>24 Q. So if we put speculation aside, as 25 you sit here today, is it accurate to say you</p>	<p style="text-align: right;">Page 308</p> <p>1 A. I thought I read recently about a 2 settlement that Administar had made with the 3 government for handling Medicare claims 4 improperly, so that would be the only evidence 5 that I would know is something from the press 6 that stated that they had done something that 7 was incorrect.</p> <p>8 Q. Let's go back to the last day of 9 employment that you had at Anthem FEP, which I 10 believe was in the first week or so of April of 11 1998, right?</p> <p>12 A. Yes.</p> <p>13 Q. At the time you left Anthem FEP, 14 did you have any facts that caused you to be 15 concerned that there was any irregularity or 16 fraud going on with respect to Administar 17 Federal Print Mail's dealings with Anthem FEP?</p> <p>18 A. Not that I can recall at this 19 moment.</p> <p>20 Q. And are you aware of any documents 21 that you had that would in any way have 22 suggested that Administar Print Mail was in any 23 way engaged in a wrongdoing or illegal conduct 25 with respect to its business dealings with Anthem FEP?</p>
<p style="text-align: right;">Page 307</p> <p>1 have no evidence to suggest that Anthem FEP or 2 any part of the Anthem organization profited 3 from the allegations you made against Personix, 4 even if they were true?</p> <p>5 MR. KELLER: Object as to form.</p> <p>6 THE WITNESS: I have no evidence 7 before me today.</p> <p>8 Q. Well, even if you don't have it in 9 front of you, do you have any that you could 10 point to that you have gathered or collected 11 over the years of -- since you brought this 12 suit?</p> <p>13 A. No, not that I can recall today.</p> <p>14 Q. Now, is there anything else that 15 we haven't talked about that you have 16 information that would suggest there was any 17 wrongdoing by Personix or Administar Federal 18 Print Mail other than what we have talked about 19 already?</p> <p>20 A. Not that I can recall at this 21 moment.</p> <p>22 Q. Do you have any facts to suggest 23 that Administar Print Mail was in any way 24 engaged on a fraud or did something improper 25 with regard to its billing practices?</p>	<p style="text-align: right;">Page 309</p> <p>1 A. I have a recollection of something 2 regarding Administar Print Mail, but I can't 3 recall the details.</p> <p>4 Q. Well, let me see if I can put it 5 this way. If I was interviewing you on the 6 last day that you were at work at Anthem FEP, 7 and I asked you to give me a list of concerns 8 that you had about compliance issues or illegal 9 misconduct or fraudulent misconduct that might 10 be going on with respect to the business of 11 Anthem FEP, would you have put anything about 12 Administar Print Mail on that list?</p> <p>13 A. I can't recall, but if I could see 14 the complaint that was filed, it may be able to 15 jog my memory about that specifically.</p> <p>16 Q. Do you have any recollection as 17 you sit here today without reading the 90- or 18 100-page complaint that would suggest that 19 Administar Print Mail was engaged in 20 wrongdoing?</p> <p>21 A. Without looking at that document, 22 I -- I can't recall at this moment. I may 23 after I look at that document.</p> <p>24 Q. Did you have any discussions with 25 anyone within the Anthem organization or Anthem</p>

<p style="text-align: right;">Page 310</p> <p>1 FEP in specific at any time during the time 2 that you were an employee of Anthem FEP related 3 to concerns about the business practices or 4 business dealings between Administar Print Mail 5 and Anthem FEP? 6 A. Again, through the passage of 7 time, I don't recall specifically -- 8 Q. But you read -- 9 A. -- at this moment. At this 10 moment. 11 Q. You read your affidavit, as I 12 think you told me, at least three times in the 13 last 30 days, didn't you? 14 A. I believe it was three times. 15 Q. And as you sit here today, you 16 don't have any recollection of that occurring? 17 A. Late in the day, Mr. Dyer. I 18 apologize. 19 Q. We will sit here for as long as 20 you think you need to. This is my only chance. 21 A. I understand. 22 Q. I am looking for any facts you 23 know or have that relate to Administar Print 24 Mail. And you have told me everything you can 25 recall; is that right?</p>	<p style="text-align: right;">Page 312</p> <p>1 other Anthem accounts. They considered that 2 part of their profit. 3 Q. Who told you that? 4 A. Ron Bectol. 5 Q. Did anybody else tell you that? 6 A. I had a conversation with Chet 7 Spykowski. 8 Q. Can you spell that one for us? 9 A. Good luck on spelling it. I have 10 no -- 11 Q. Spykowski? 12 A. It's S P Y something. I can't 13 recall. 14 Q. And what -- I'm sorry. Go ahead. 15 A. And I can't -- I don't recall if 16 that was part of the discussion or not, but 17 my -- to the best of my recollection, I made 18 him aware that the FEP HMP program was a cost 19 plus program, and that all we could turn over 20 to OPM for cost in the HMP program were the 21 actual costs minus rebates. 22 And I -- I don't recall whether or 23 not Chet specifically addressed what the rebate 24 was or not, but I do recall having a discussion 25 with him. It took place after the discussion</p>
<p style="text-align: right;">Page 311</p> <p>1 A. You have asked me not to 2 speculate; therefore, I am not. 3 Q. Thank you. 4 A. I don't recall at this moment, but 5 I suspect that if that was part of my 6 complaint, maybe reviewing the affidavit or the 7 complaint would be sufficient in order to jog 8 my memory. 9 Q. Let's talk about Anthem 10 Prescription Management, or APM. 11 A. Okay. 12 Q. Do you have any facts or 13 information, did you have, on the last day of 14 your employment at Anthem FEP that caused you 15 to believe that there was some illegal or 16 noncompliant business practice going on at 17 Anthem FEP in its dealings with Anthem -- 18 excuse me, with APM? 19 A. Yes. 20 Q. What facts did you have? 21 A. I had through conversations with 22 Anthem Prescription Management employees been 23 told that the rebate that came to APM from 24 pharmaceutical manufacturing companies was not 25 being completely credited to the FEP account or</p>	<p style="text-align: right;">Page 313</p> <p>1 that we had regarding the overpayment of claims 2 by FEP -- or, I'm sorry, APM. 3 So I do recall having that 4 conversation. I don't recall Chet telling me 5 that they were not returning the entire rebate. 6 Q. What did Ron Bectol tell you about 7 APM's failure to return the entire -- or to 8 credit the entire rebate to FEP? 9 A. I had called him on several 10 occasions trying to get a definitive answer as 11 to whether or not the rebate was being credited 12 back to FEP, to the HMP program. Ron did not 13 know. Ron was the liaison, so to speak, I 14 don't know his full title, between APM and the 15 business divisions of Anthem. So, in essence, 16 I was his customer. 17 I had become aware of prescription 18 benefit managers failing to return rebates 19 through magazine articles, through FEP 20 meetings, through OPM plan documents and 21 bulletins, those kind of things. So I felt 22 that I needed to make sure that any rebates 23 that were being returned to Anthem Prescription 24 Management found its way back to the charges 25 and were a credit against any charges that we</p>

<p style="text-align: right;">Page 314</p> <p>1 were submitting to the government for 2 prescriptions paid for for their members. 3 Ron told me after several 4 conversations that he was having a hard time 5 getting a definitive answer, and finally he 6 told me that what he was able to find out was 7 that the rebates run between \$1 and \$10 per 8 prescription, that the average was about four, 9 and that as a general rule, APM credits a 10 dollar per prescription back to whoever their 11 customer would be, whether it's Ford Motors or 12 an administrative services only client or even 13 the commercial insurance division of Anthem, 14 and including FEP HMP.</p> <p>15 Q. Anything else you recall Ron 16 telling you?</p> <p>17 A. I asked him why he only returned 18 the dollar, and he said because the division 19 considers anything in excess of that their 20 profit. I said but you can do that with 21 everyone else if you want, you just can't do 22 that with the federal government program.</p> <p>23 And he said, look, I'm just the 24 sales guy. I'm just the marketing rep, the 25 liaison. I don't have any control over that.</p>	<p style="text-align: right;">Page 316</p> <p>1 A. Yes. 2 Q. And have you sold him insurance in 3 some of your other businesses? 4 A. I don't think so. I bought some 5 from him recently. 6 Q. Where does Ron work now? 7 A. A company in Kentucky called 8 Business Benefits. 9 Q. So you and Ron have remained 10 social friends since the time you left, right? 11 A. On and off. He has younger 12 children; I have older children. He is going 13 to soccer games; we are going to high school 14 events, you know, so our -- I will run into him 15 at a Buffalo Wild Wings, and we may sit down 16 together and have wings or something. 17 Q. With regard to this Anthem FEP 18 rebate issue, when Ron told you that 19 information, what did you do? 20 A. I don't recall specifically what I 21 did, other than tell him that that practice had 22 to stop. I believe that I made Michael Jensen 23 aware of my findings, as well. And this had to 24 be probably in early '98, because it was 25 subsequent to the meetings that took place</p>
<p style="text-align: right;">Page 315</p> <p>1 I said, well, you need to make sure that people 2 know.</p> <p>3 Q. And let's back up. Ron Bectol, 4 then, really was having to go ask other people 5 for -- to get the information you wanted, 6 right?</p> <p>7 A. That's my understanding.</p> <p>8 Q. What he told you was he didn't 9 have any personal knowledge, but he made some 10 inquiries to people to try and find out what 11 was going on with rebates, right?</p> <p>12 A. That's my understanding.</p> <p>13 Q. And Ron Bectol was somebody you 14 had worked with before at FEP, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And he was then an APM employee?</p> <p>17 A. Correct.</p> <p>18 Q. And you have seen Ron Bectol since 19 the time you left Anthem FEP, haven't you?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. You remain friends with him, don't 22 you?</p> <p>23 A. Yes.</p> <p>24 Q. You have sold him insurance at 25 Eppa Rixey, right?</p>	<p style="text-align: right;">Page 317</p> <p>1 regarding the overpayment of the benefits. It 2 would be late '97 or early '98.</p> <p>3 Q. Is there anyone else besides 4 Mr. Jensen that you recall telling what you had 5 learned from Ron Bectol?</p> <p>6 A. I don't recall at this time.</p> <p>7 Q. And have you told me everything 8 that you recall about your conversation with 9 Mr. Jensen concerning APM rebates?</p> <p>10 A. Everything that I can recall at 11 this time.</p> <p>12 Q. This whole APM rebate issue, I 13 think we said at the outset of this deposition, 14 relates to the FEP HMO product, right?</p> <p>15 A. I believe that's the case, yes.</p> <p>16 Q. And you had some responsibilities 17 for operating the FEP HMO product; is that 18 correct?</p> <p>19 A. Yes, you could say that.</p> <p>20 Q. And so it's accurate to say that 21 you viewed getting to the bottom of this rebate 22 issue as part of your duties and 23 responsibilities at FEP, right?</p> <p>24 A. That's correct.</p> <p>25 Q. And, in fact, when you were</p>

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1 STATE OF OHIO)

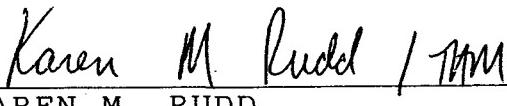
2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Karen M. Rudd, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified,

6 DO HEREBY CERTIFY that the above-named
7 ANDREW M. GARNER, III, was by me first duly sworn
8 to testify the truth, the whole truth and nothing
9 but the truth; that said testimony was reduced to
10 writing by me stenographically in the presence of
11 the witness and thereafter reduced to typewriting.

12 I FURTHER CERTIFY that I am not a relative
13 or Attorney of either party nor in any manner
14 interested in the event of this action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal of office at Dayton, Ohio, on
17 this 5th day of November, 2005.

18
19 
20 KAREN M. RUDD
NOTARY PUBLIC, STATE OF OHIO
21 My commission expires 5-21-2007
22
23
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